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IN THE

Supreme Court of the United States

October Term, 1994

JACOB FRAIDIN,

Petitioner,

v.

ANDRE R. WEITZMAN, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITIONER'S REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

[These are the same Questions as presented in Petitioner's originally-filed Petition.]

1. At either a new hearing or new trial concerning punitive damages on remand, is additional relevant evidence regarding the net worth of a defendant admissible, particularly if there has been a change in defendants' financial condition since the original damage award?

2. Did the punitive damages figure entered at the remand hearing comply with due process requirements and other punitive damages standards, particularly in view the alleged conduct supposedly supporting such damages?

3. Was the punitive damages award so excessive as to violate due process?

PARTIES TO THE PROCEEDING

The parties to the proceeding, including those noted in the caption of this case, are:

Jacob Fraidin, Petitioner,

North American Credit Corporation (a party to the previous matters but not a Petitioner here),

Pacific Mortgage and Investment Corporation (a party to the previous matters but not a Petitioner here),

Andre Weitzman, Respondent, and

Sheldon Braiterman, Respondent.

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IN THE SUPREME COURT OF THE UNITED STATES
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JACOB FRAIDIN,
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v.

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PETITIONER'S REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION

Jacob Fraidin, proceeding pro se, under Supreme Court Rule 15.6 and Rule 33, here submits this Reply Brief to respond to the arguments and statements made in the Brief in Opposition.

OPINIONS BELOW

[See Petition and Supplemental Brief]

The case which is the subject of this Petition was decided by the Court of Special Appeals on March 29, 1994 (*Jacob Fraidin, et al. v. Andre Weitzman, et al.*, No. 935, September Term, 1993). [The opinion is set forth in the Appendix to the Petition, beginning at p. 1a].

The matter arose from a jury trial in the Circuit Court for Baltimore City on a Complaint by Respondents Andre Weitzman, Esq. and Sheldon Braiterman, Esq. (as Plaintiffs) against Petitioners Jacob Fraidin (Fraidin) and North American Credit Corporation, Pacific Mortgage & Investment Company (the Corporations) (as Defendants) and other Defendants not parties to this Petition. The Complaint was filed February 13, 1986. (The first trial ended in a mistrial).

Trial began on September 18, 1990. Petitioners, on

December 20, 1990, were assessed compensatory damages of $183,474.93. In a later punitive damages proceeding, the jury on January 18, 1991 assessed punitive damages against Petitioners of $3 million--$2.5 million for Mr. Weitzman and $500,000 for Mr. Braiterman. On May 3, 1991, the Circuit Court denied post-judgment motions. Defendants appealed.

On August 9, 1991, while the appeal was pending, Mr. Fraidin filed for bankruptcy. On September 26, 1991 relief from automatic stay was granted by the Bankruptcy Court. On October 15, 1991, the Court of Special Appeals ordered the appeal and other matters shall proceed.

On September 4, 1992, the Court of Special Appeals issued *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992), *cert.den.*, 329 Md. 109, 617 A.2d 1055. The Court remanded the punitive damages award. Petitioners timely filed with the Court of Appeals of Maryland a petition for a writ of certiorari on other issues. This was denied on January 14, 1993.

On remand as to punitive damages, the Circuit Court (Hon. Thomas E. Noel, J.) on February 25, 1993, it conducted a hearing at which it declined to consider certain new evidence--including the fact that Mr. Fraidin had filed for bankruptcy.

The Circuit Court reduced the punitive damages award by half. It issued an Order remitting any punitive damages in excess of $1,250,000 for Mr. Weitzman and any punitive damages in excess of $250,000 for Mr. Braiterman.

This prompted a second appeal by Mr. Fraidin (and the Corporations) to the Court of Special Appeals. That Court, on March 29, 1994, affirmed. (*Jacob Fraidin, et al. v. Andre Weitzman, et al.* Court of Special Appeals, No. 935, September Term, 1993 (unreported)). Petitioners timely filed with the Court of Appeals of Maryland for a petition for a writ of certiorari. That petition was denied on September 14, 1994.

GROUNDS FOR JURISDICTION

Jurisdiction is based on 28 U.S.C. Sec. 1257(a).

STATEMENT OF THE CASE

The background Case was reviewed in the Petition and Supplemental Brief. For a more detailed treatment, see the Statement of the Case in the Petition, beginning at 5.

A $10,000 loan was arranged between Ray Dorman and Margarette Dorman ("the Dormans") and North American Credit Corporation. The loan was brokered by Pacific Mortgage & Investment Group, Ltd. and secured by a mortgage held by North American Credit ("the Corporations"). Both Corporations are managed by Jacob Fraidin ("Fraidin").

After the loan proceeds were paid to the Dormans, they decided it, and the interest charged for it, were improper. In May of 1982, they retained Sheldon H. Braiterman, P.A. ("Braiterman") and Andre R. Weitzman ("Weitzman") to take legal action against Fraidin and the Corporations on the loan.

An action challenging the $10,000 loan was filed. On September 23, 1985, after a three-day trial, the jury returned a verdict against Fraidin and the Corporations of $66,949.86 in compensatory damages and $300,000 in punitive damages. Post-trial motions were denied on November 7, 1985.

Following this verdict, Fraidin wished to settle the matter and believed the Dormans wished to do so. He met with Weitzman and Braiterman on November 1, 1985 and offered to settle the judgment for $100,000 over five years or $60,000 payable immediately. This offer was not accepted and was not communicated by Weitzman to the Dormans.

In mid-November, 1985, there were further contacts about settlement between either Fraidin or Braiterman or Weitzman. On November 25, 1985, Dorman left a message at the office of an attorney for Fraidin that Dorman wanted to settle.

Fraidin requested advice and was informed by his counsel that he could deal directly with the Dormans. On November 27, 1985, Fraidin contacted the Dormans to meet about settlement. The Dormans told Weitzman of this meeting, although Weitzman advised Dorman not to meet with Fraidin if Weitzman was not present.

It appeared the Dormans, dissatisfied with the treatment they had received by Weitzman, had decided to discharge him as their counsel before any meeting between them and Fraidin. In any event, the Dormans arranged to meet Fraidin directly.

On Thanksgiving Day, 1985, Fraidin met with the Dormans to discus settlement. Weitzman was not present. On November 28, 1985, Fraidin met with Mr. Dorman and Weitzman. Several days afterwards, Fraidin met with the Dormans again. Weitzman later appeared and attempted to break up the meeting.

On December 4, 1985, the Dormans sent notice discharging Weitzman and Braiterman. But on December 6, 1985, Weitzman met with Mr. Dorman and obtained a handwritten statement disclaiming that letter and confirming the case had not been settled.

Nevertheless, settlement did occur between Fraidin and the Dormans. On December 9, 1985, the Dormans settled with Fraidin for $50,000. On December 8, Fraidin informed Weitzman that Fraidin and the Dormans were going to settle the next day and told Weitzman that he, Weitzman, could attend. Attorneys for Fraidin or for the Dormans were not present at the settlement. A notice of satisfaction of judgment was filed with the Circuit Court, on December 10, 1985. On December 14, the Dormans again wrote to Weitzman, reaffirming termination of his services.

Weitzman and Braiterman, on December 11, 1985, filed a motion to set aside the order of satisfaction. The Circuit Court

on December 26, 1985, (J. William Hinkel, J.) held an extensive hearing on that motion. All counsel involved were present. Ms. Dorman testified the settlement was voluntary and that they were satisfied with it. On January 10, 1986, Judge Hinkel denied the motion to set aside the order of satisfaction. There was no appeal.

However, on February 13, 1986, Respondents initiated legal action against: the Dormans, Fraidin, the Corporations, and counsel for Fraidin or the Corporations. The Complaint alleged: breach of contract, quantum meruit fee, fraud, conspiracy, and tortious interference with contract.

The second trial which began on September 18, 1990 took up 29 days. The eventual jury verdicts were: on Count I (breach of contract against Dormans): $25,000 plus interest; on Count IV (interference with contract as to Fraidin, the Corporations, and their counsel): no liability as to counsel, but liability as to Fraidin and the Corporations and damages of $183,474.93 plus interest, and on Count V (civil conspiracy as to all defendants): liability as to the Dormans, Fraidin and Corporations, but not as to counsel. No damages were awarded.

Exemplary damages were assessed on Counts IV and V. In a punitive damages proceeding of January 18, 1991, the jury awarded punitive damages against Fraidin and the Corporations of $3,000,000--$2,500,000 for Weitzman, and $500,000 for Braiterman. Post-judgment motions were denied on May 3, 1991. Fraidin and the Corporations appealed.

The Court of Special Appeals in general affirmed the verdict. The sole matter remanded was punitive damages. The Court determined (deciding the question before a recent Court of Appeals opinion on the issue) that sufficient "malice" could be found based on these circumstances. But the Court remanded the punitive damages in light of due process standards described in *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991).

(And see *Alexander & Alexander, Inc. v. B. Dixon Evander & Associates*, 88 Md.App. 672, 596 A.2d 687 (1991), *cert.den.*, 326 Md. 435, 605 A.2d 137). It remanded the punitive damages award for the Circuit Court's "reconsideration of granting a remittitur, or if rejected, a new trial."

At the February 25, 1993 hearing on punitive damages, the Circuit Court remarked, "I would be most interested in hearing what the investigator would testify to, but I don't feel it is proper." The Court said, "I do find that in a remittitur hearing I am bound by what occurred at trial, and I am not permitted to go beyond that, so that is what I will limit my finding to, the evidence that was adduced during the very lengthy and interesting trial that we had here... ."(For this and other matters occurring at the remand hearing, see Petition and Appendix, including transcript of the remand hearing beginning at p. 51a).

On Petitioners' appeal from the Circuit Court's actions, the Court of Special Appeals affirmed. That Court stated, "The jury's award of punitive damages was based upon evidence considered by the jury at trial." It continued: "Thus, it would have been inappropriate for the trial court to have granted its remittitur based upon evidence other than that considered by the jury. In short, the trial court complied with our mandate."

REPLY TO RESPONDENTS' BRIEF

While spending precious little time actually responding to the crucial issues raised in the Petition and Supplemental Brief before this Court, Respondents embark on an odious and entirely inappropriate campaign of character assassination and innuendo. Respondents' statements are so far afield of the issues here that their entire Brief in Opposition deserves little attention from this Court and indicates that, indeed, there is no jurisdictional or other impediment to this Court entertaining the issues raised here.

Respondents state (see Brief in Opposition at 9-10) that

Petitioner has a "well deserved reputation for dishonesty." Respondents then proceed to quote liberally from a Court of Special Appeals opinion issued *five years ago*, and which has nothing whatsoever to do with this present case.

Then, rather than address themselves to the critical issue of whether, on remand or later proceeding relating to punitive damages, a Court or jury--consistent with due process requirements--should consider changes in a defendant's financial position occurring since the original trial, or rather than discuss authorities bearing upon that issue, Respondents offer various quotes about Petitioner in an opinion from the United States Court of Appeals for the Fourth Circuit. (Respondent's Brief at 10-11). Yet that Opinion has nothing at all to do with this case.

Then Respondents continue their crusade of character assassination and by noting "secret payments" and other matters that, again, have no bearing on the issues. Following this, they merely recite that the Court of Special Appeals, in its review of the financial matters here, concluded the issue of Petitioner's net worth "was a matter for the jury." (Respondents' Brief at 12-13). But that statement begs the question regarding the present issues.

Petitioner did not have a "full and fair opportunity" to present evidence of his net worth to the jury. Nor did he rely on "fabricated" documents in doing so. Nor, more directly, do these present issues involve the nature of the evidence of net worth at the original trial. The question here is whether changes in financial circumstances are to be considered, and in the larger sense, whether there was sufficient malice under the prevailing view of Maryland law to support the punitive damages award.

Respondents completely miss the point by then arguing that the Maryland practice of remittitur complies with due process. Certainly Petitioner consistently contended that a trial rather than a hearing should have been conducted on remand. But

that is not the same as challenging remittitur as a procedure.

And whether upon remand, Petitioner was entitled to a new evidentiary hearing indeed is among the issues raised here. But Respondents' bald statement denying Petitioner was so entitled does little to advance the issue. Certainly Respondents do not believe Petitioner was entitled to a new evidentiary hearing--or anything else. But that view is hardly dispositive.

The interaction between these parties clearly has been contentious. Years of court proceedings over the scenario which generated the Respondents' litigation have shown that. But that situation does not mean that certiorari should not be granted here.

Petitioner has not contended that due process requires a precise ratio between compensatory and punitive damages. (Respondents' Brief at 17). Due process, however, does demand justice in this regard, and justice was not done in the original punitive damages award--overturned on appeal--or the proceeding in the Circuit on remand.

Petitioner states that the facts do not justify a "substantial award" of punitive damages. If anything, the recent Court of Appeals decision of *Alexander & Alexander v. B. Dixon Evander & Associates, Inc.*, 336 Md. 635, 650 A.2d 260 (1994) ("Alexander"), holds otherwise. In a circumstance much more egregious than the scenario here, that Court *did not find the requisite malice for recovery on a cause of action of tortious inference with contract or with business relationship, and thus did not find the requisite malice for punitive damages recovery.* The *Alexander* court did not even reach due process issues relating to punitive damages. (See fn. 25 at Supp.App. 31a--for a discussion of these issues as they relate to the present matter, see originally-filed Petition). Thus, that Court overturned a punitive damage award *totalling $5,000,000.*

An essential part of Petitioners' argument on punitive

damages was whether Petitioner's conduct was sufficient for a of liability and even if so, whether "malice" existed sufficient for a punitive damage award. These issues were present at the original trial of this matter, in the appeal from that trial, at the remand proceeding, and in the appeal from that remand proceeding--which resulted in the present Petition here.

As Petitioner stated in his Supplemental Brief, even if there was room for debate on those issues in the prior stages of this matter, *Alexander* has settled the issue in Petitioner's favor. Petitioner's conduct did not constitute the "malice" necessary for recovery and, even if so or even if recovery was available on another cause of action, the conduct was not accompanied by the "malice" necessary for a punitive damages award. (For discussion of that decision and its impact on this matter, see Supplemental Brief. The decision is reproduced as an Appendix to that Brief).

The Court of Appeals stated even "purposeful interference with business relationships" may be considered "an integral part of commercial competition" and thus not be considered wrongful with respect to such tort actions. And the Court added, *"we have made it clear in our cases that acting to pursue one's own business interests at the expense of others is not, in itself, tortious."* [Emphasis supplied].

When it is evident that the interference claim does not involve any illegal acts, the plaintiff carries "a heavy burden in trying to establish the interference tort through proof of actual malice." In addition, *"acts of interference with economic relations do not become tortious simply because the defendant carries them out with a wrongful intent."* Thus, even "animosity" is not sufficient to sustain the tort if the actor's conduct "was incidental to its pursuit of legitimate commercial goals."

The entire settlement was approved by the Circuit Court in an open proceeding on Respondents' motion to set aside the

notice of satisfaction of judgment. That Court, based in part on testimony from Ms. Dorman that the Dormans freely entered into the settlement, ruled the settlement was voluntary and refused to set it aside. Respondents did not appeal. Thus, their various characterizations of Fraidin's alleged conduct as to the settlement scenario (see e.g., Respondent's Brief at 4-5) are not relevant.

Petitioner does not "misread" *Alexander*. (Respondents' Brief at 19-20). Petitioner in his Supplemental Brief engaged in a comprehensive discussion of that case and the basis for its decision. Respondents have chosen not to detail or to describe how Petitioner has "misread" that case, nor have they managed to explain just how *Alexander* not significant here.

Respondents finally, in a last-ditch effort to avoid a consideration by this Court of substantive due process and other issues dealing with punitive damages, simply state that there is "no issue reviewable by this Court" and there is a "lack of any substantive federal issue" in this matter. (Respondents' Brief at 20). Respondents, however, have not discussed any of the cases or authorities noted by Petitioner in his Petition or Supplemental Brief, have not indicated that there is any jurisdictional defect to the Petition, and have not raised any argument preventing review by this Court of very important and persistent due process issues concerning application and award of punitive damages--especially in a remand or later proceeding.

In short, Respondents have not presented this Court with any reason for denying the Petition. Accordingly, Petitioner urges this Court to consider the issues raised here, grant this Petition, and review essential aspects of punitive damages awards.

CONCLUSION

THEREFORE, Petitioner requests of this Court that it GRANT his Petition for a Writ of Certiorari and REVERSE the decision of the Court of Special Appeals of Maryland.

RESPECTFULLY SUBMITTED,

/s/

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